

1 The Honorable John C. Coughenour
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8 **UNITED STATES DISTRICT COURT WESTERN DISTRICT OF**
9 **WASHINGTON AT TACOMA**

10 KEVIN SELKOWITZ, and individual,)
11 Plaintiff,) No. 3:10-cv-05523-JCC
12 v.)
13 LITTON LOAN SERVICING, LP, a Delaware)
14 Limited Partnership; NEW CENTURY)
15 MORTGAGE CORPORATION, a California)
16 corporation; QUALITY LOAN SERVICE)
17 CORPORATION OF WASHINGTON, a)
18 Washington Corporation; FIRST AMERICAN)
19 TITLE INSURANCE COMPANY, a)
20 Washington Corporation; MORTGAGE)
ELECTRONIC REGISTRATION SYSTEMS,)
INC., a Delaware Corporation; DOE)
DEFENDANTS 1-20,)
Defendants.)

DEFENDANT QUALITY LOAN
SERVICE CORPORATION OF
WASHINGTON'S RESPONSE TO
THE COURT'S ORDER TO SHOW
CAUSE

21 ***I. I. INTRODUCTION***

22 COMES NOW Defendant Quality Loan Service Corporation of Washington
23 ("QUALITY") responding to this Court's Order to Show Cause entered on October 6, 2010.

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DEFENDANT QUALITY'S RESPONSE TO
ORDER TO SHOW CAUSE PAGE 1 of 10
CASE NO. 3:10-cv-05523-JCC

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1 **II. ISSUE ONE: Whether Washington has addressed Mortgage Electronic Registration
2 Systems'— and similar organizations'—ability to serve as the beneficiary and nominee
3 of the lender under Washington's Deed of Trust Act when it does not hold the
4 promissory note secured by a deed of trust.**

5 **A. Washington Courts have held that MERS' may act as the beneficiary and
6 nominee to the lender.**

7 Washington Courts, while not specifically reviewing the role of MERS under RCW
8 61.24.0005(2), have reviewed countless cases in which MERS has acted as a beneficiary and
9 nominee to the lender under a Deed of Trust Secured by real property. None of those cases
10 found MERS' role in the origination and/or non-judicial foreclosure upon said deeds of trust
11 impermissible under Washington law. Notably, multiple recent Washington decisions have
12 found the opposite; that MERS may in fact act as the beneficiary and nominee to a lender. *See*
13 *Daddabbo v. Countrywide Home Loans, Inc.*, No. C09-1417-RAJ, 2010 U.S. Dist. LEXIS
14 50223, at *18 (W.D. Wash. May 20, 2010); *Vawter v. Quality Loan Service Corp.*, 707 F.Supp.
15 2d 1115 (U.S. Dist. Ct. W.D. Wash. 2010); *Moon v. GMAC Mortgage Corp.*, *Moon v. GMAC*
16 Mortgage Corp., No. C08-969Z, 2008 U.S. Dist. LEXIS 90912, at *5 (W.D. Wash. Oct. 24,
17 2008).

18 In *Daddabbo v. Countrywide Home Loans, Inc.*, No. C09-1417-RAJ, 2010 U.S. Dist.
19 LEXIS 50223 (W.D. Wash. May 20, 2010), the plaintiff challenged a non-judicial foreclosure
20 based on MERS' status as beneficiary where MERS was not the holder of the promissory note.
21 *Id.* at *18. Rather, the note was held by Wells Fargo & Deutche National Trust Company, and
22 Morgan Stanley ABS Capital I Inc., *Id.* at *16 Fn 2. However, like the Deed of Trust at issue in
23 the instant case, the deed of trust in *Daddabbo* also named MERS as the beneficiary and
24 nominee to the lender. *Id.* at *18. Upon review of the plaintiff's claims in light of the
25 Defendants' Motion to Dismiss, the *Daddabbo* Court held that:

26 Plaintiffs' sole basis for blocking the foreclosure (other than the bases rejected
above) is their contention that MERS has no beneficial interest in the note that the
deed of trust secures, and that Recontrust therefore has no power as MERS's
designee to initiate a foreclosure action. This assertion is baffling. The deed of
trust, of which the court takes judicial notice, explicitly names MERS as a

1 beneficiary. The deed of trust grants MERS not only legal title to the interests
 2 created in the trust, but the authorization of the lender and any of its successors to
 3 take any action to protect those interest, including the "right to foreclose and sell
 4 the Property." Plaintiffs attempt to counter this unambiguous grant of power by
 5 introducing a prospectus for the trust that holds the deed of trust. Plaintiffs do not
 6 explain how the court can properly consider this document on a motion to
 7 dismiss. The court considers it nonetheless, because nothing in it remotely
 8 supports Plaintiffs' assertion that MERS somehow has been stripped of the power
 9 that the deed of trust grants. Plaintiffs have raised no valid basis to stop any
 10 foreclosure sale." *Id.* (internal citations omitted).

11 The Court considered the documents identifying the trust company as the holder of the note, and
 12 held that it does not "remotely support[] Plaintiffs' assertion that MERS somehow has been
 13 stripped of the power that the deed of trust grants." *Id.* The Court then concluded by ruling that
 14 the plaintiffs had raised no valid basis to stop the impending non-judicial foreclosure of their
 15 property. *Id.*

16 Similarly, in *Vawter v. Quality Loan Servicing Corp. of Washington*, 707 F.Supp.2d 1115
 17 (W.D. Wash. 2010), the plaintiff also challenged MERS's role as beneficiary and nominee to the
 18 lender under the deed of trust where MERS was not the holder of the note. *See Id.* In *Vawter*, the
 19 original lender was Paul Financial, and the original beneficiary "acting solely as nominee for
 20 Lender and Lender's successors and assigns" was MERS. *Id.* at 1118. MERS later assigned its
 21 interest in the deed of trust to Chase. *Id.* at 1119. The plaintiff argued "MERS cannot be a
 22 beneficiary and therefore MERS' appointment of a new trustee was invalid." *Id.* Upon review of
 23 the plaintiff's claims in light of the Defendants' Motion for Judgment on the Pleadings, the
 24 *Vawter* Court held that the factual allegations of the complaint, even accepted as true, did not
 25 give rise to a genuine issue of material fact as to whether MERS properly held a beneficial
 26 interest under the Deed of Trust." *Id.* at 1126. The Court also stated that "the deed of trust act
 27 allows a beneficiary, such as MERS, to appoint a successor trustee, which MERS did in this
 28 case." *Id.*

29 In both *Vawter* and *Daddabbo*, MERS was not the holder of the note at the time that
 30 MERS was designated as the beneficiary, and in both cases the Court held that it did not affect
 31

1 any actions taken by MERS as the beneficiary of the deed of trust, as nominee for lender and
 2 lender's successors and assigns.¹ Therefore, Washington has addressed whether MERS can
 3 serve as the beneficiary and nominee for the lender, under Washington's Deed of Trust Act when
 4 it does not hold the promissory note secured by the deed of trust, and held in the affirmative that
 5 it can. Under Washington law, the borrower and lender are free to contract for the lender to act
 6 through MERS, solely as lender's nominee, for purposes of carrying out actions required of the
 7 beneficiary.

8 The *Vawter and Daddabbo* cases are supported entirely by Washington law. The Court's
 9 rulings rightly respect the parties' freedom to contract for MERS to serve as the beneficiary, as
 10 nominee for the lender. MERS is designated in the contract—that is the deed of trust—by the
 11 Plaintiff (the borrower and grantor) and by the lender, to serve as the beneficiary of the deed of
 12 trust, as nominee for lender and lender's successors and assigns. *See Exhibit A to, Defendants'*
 13 Motion to Dismiss. Deeds of trust, like mortgages, are contracts used to secure the performance
 14 of an obligation or the payment of a debt. *In re McGrath's Estate*, 71 P.2d 395, 40 (Wash. 1937)
 15 ("the trust deeds are contracts"); *Spark Networks, PLC v. Knedlik*, 155 Wash. App. 1024 (Wash.
 16 App. 2010) (applying the six year statute of limitations on contracts to deeds of trust); *see also*,
 17 *Kenly v. Miracle Props.*, 412 F. Supp. 1072, 1075 (D. Ariz. 1976) (a deed of trust is a "private

18 ¹ The Court's rulings in *Vawter and Daddabbo* are tantamount to the holdings of numerous other courts in various
 19 jurisdictions, in particular other states in the Ninth District, that have specifically held that MERS may, as
 20 beneficiary and nominee for the lender or lender's successors and assigns, hold legal title to the deed of trust as the
 21 beneficiary and has standing to assign the beneficial interest under the deed of trust, substitute or appoint a successor
 22 trustee, and even to initiate and pursue non-judicial foreclosure to enforce the security interest created by the note and
 23 deed of trust. *See, e.g., Benham v. Aurora Loan Services*, (N.D. Cal. Feb 9, 2010) No. C-09-2059 SD, 2010 WL
 24 532685 (As beneficiary under the Deed of Trust, MERS was free to make a substitution of the trustee in order to
 25 conduct the foreclosure sale.); *Castaneda v. Saxon Mortg. Servs., Inc.* (E.D. Cal. 2009) 687 F. Supp. 2d 1191, 1198
 26 (MERS is duly authorized to conduct a non-judicial foreclosure, or to substitute a trustee to do the same.); *Elias v. HomeEq Servicing*, 2009 WL 481270, 1 (D. Nev. 2009) (deeds of trust confirmed the standing of the loan servicer,
 the loan owner, and MERS as the nominee beneficiary to seek foreclosure); *Blau v. America's Servicing Co.*, 2009
 WL 3174823, 7-8 (D. Ariz. 2009) (MERS was authorized to act on behalf of, and exercise the rights of, the loan
 originator); *Cervantes v. Countrywide Home Loans Inc.*, 2009 WL 3157160, 11 (D. Ariz. 2009) (rejecting claim that
 MERS could not act as beneficiary under a deed of trust); *Foster v. BAC Home Loan Servicing, LP.*, 2010 U.S. Dist.
 LEXIS 100038 at *8 (D. Utah Sept. 22, 2010); *MERSCORP, Inc. v. Romaine*, 8 N.Y.3d 90, 101, 828 N.Y.S.2d 266,
 271, 861 N.Ed.2d 81 (2006).

1 contractual relationship" between "the trustor and the beneficiary, with the trustee acting as agent
 2 for both and acting pursuant to the terms of the instrument and their instructions").

3 Absent an unlawful purpose, parties are free to contract as they wish. *Torgerson v. One*
 4 *Lincoln Tower, LLC* 166 Wash.2d 510, 517, 210 P.3d 318, 322 (Wash. 2009) ("It is black letter
 5 law of contracts that the parties to a contract shall be bound by its terms."); *Patton v. City of*
 6 *Bellingham*, 38 P.2d 364 (Wash. 1934) (Parties "are free to make any contract they choose for a
 7 lawful purpose"). And Washington law specifically provides that "parties may insert in such
 8 mortgage any lawful agreement or condition." Wash. Rev. Code § 61.12.020. Deeds of trust
 9 are, of course, mortgages. Wash. Rev. Code § 61.24.020 ("The county auditor shall record the
 10 deed as a mortgage"); *Kendrick v. Davis*, 75 Wash.2d 456, 460, 452 P.2d 222, 225 (Wash. 1969)
 11 ("if the intent is to use the property as security, it will be a mortgage"); 18 WAPRAC § 20.2 ("a
 12 deed that is given as security for an obligation is a mortgage"). MERS agreed to be designated,
 13 and was designated, by both Plaintiff and the lender to act on behalf of the lender in the express
 14 capacity outlined in the deed of trust contract. Because there is nothing unlawful about a
 15 contract that designates a nominee to act for one of the contracting parties for a limited and
 16 specified purpose, the *Vawter* and *Daddabbo* Courts correctly held that MERS can serve as
 17 beneficiary of the deed of trust, solely as nominee for lender and lender's successors and assigns.

18 Not only is there nothing unlawful about the contract, but Washington's Deed of Trust
 19 Act expressly contemplates that the actions of the trustee or beneficiary will be performed by
 20 authorized agents. The most critical section of the Act, the section that outlines the detailed
 21 requirements for issuing the notice of default to the borrower prior to initiating a trustee sale,
 22 expressly contemplates that these duties can be performed by a "trustee, beneficiary, or
 23 authorized agent." Wash. Rev. Code § 61.24.031. These same duties of the beneficiary and
 24 trustee are referenced or described in other sections of the act without reference to agents,
 25 thereby dispelling any notion that the Act intended to specify or limit when an actor can act
 26 through an agent and when it cannot. e.g. § 61.24.030(8); 61.24.040(1)(f). Acting through an

1 agent is a commonplace and uncontroversial practice in the conduct of any business. It is the
 2 trustee's statutory duty to ensure that a sale is being initiated on behalf of the holder of the note,
 3 § 61.24.030, and the trustee and beneficiary's duty to ensure that the borrower receives proper
 4 notice. § 61.24.030; 61.24.031; 61.24.040. Whether the duties are fulfilled directly by the
 5 principal or through an authorized agent is immaterial. Therefore, the parties' agreement to
 6 designate MERS as beneficiary, solely as nominee for the lender, is fully supported by
 7 Washington law, as demonstrated by the decisions in *Vawter* and *Daddaabbo*, and does not need
 8 to be certified as a question to the Washington Supreme Court.

9 **B. MERS' agency relationship with lenders.**

10 MERS is an agent of the lender, its successors and assigns based on the terms of the deed
 11 of trust. An agency relationship exists when a principal manifests assent to have an agent act on
 12 its behalf, subject to the principal's control and consent of the agent. Restatement (Third) of
 13 Agency § 1.01 (2006). An agent may act on behalf of both a disclosed principal (the original
 14 lender) and a later unidentified principal (lender's successor and assign). *Id.* at § 1.04. The
 15 recorded deed of trust agreement, as executed by the borrower, expressly spells out the principal-
 16 agency relationship between MERS and the lender. *Id.* at § 2.02 ("An agent has actual authority
 17 to take action designated or implied in the principal's manifestations to the agent and acts
 18 necessary or incidental to achieving the principal's objectives . . ."). As such, any action taken
 19 by MERS is necessarily actions taken by the lender, its successors and assigns. *See* Deed of
 20 Trust, Exhibit A to Defendants' Motion to Dismiss. ("Borrower understands and agrees that
 21 MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but,
 22 if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's
 23 successors and assigns) has the right: to exercise any or all of those interests . . . *and to take any*
 24 *action required of Lender . . .*"). The terms of the deed of trust clearly define the powers of
 25 MERS under the agency relationship to act in place of the lender, its successors and assigns,
 26 which logically include the power to substitute a trustee. Therefore, as beneficiary, MERS is the

1 agent of the lender, its successors and assigns, with respect to the deed of trust, and is generally
 2 understood as a person designated to act in place of another.

3 The agreement between MERS and its members further defines the agency relationship
 4 agreed to in the deed of trust. The Terms and Conditions that govern the relationship state that
 5 "MERS shall at all times comply with the instructions of the holder of mortgage loan promissory
 6 notes." *See* MERSCORP, Inc., Terms and Conditions, Paragraph 3, attached as Exhibit A.
 7 Whether initiated by the holder of the promissory note or by MERS, as nominee for the
 8 lender/note holder, the sale is initiated on behalf of and for the benefit of the holder of the note
 9 for whom the property is held in trust, a requirement that the trustee has an independent duty to
 10 affirm. § 61.24.030. In the end, the intent of the contracting parties and of the Act is met. If the
 11 borrower/grantor fails to make payments, the lender or current note holder is entitled to have the
 12 property sold to satisfy the delinquent debt.

13 ***III. ISSUE TWO: Whether Washington has addressed the legal effect in a nonjudicial
 14 foreclosure of an unauthorized beneficiary's appointment of a successor trustee.***

15 The Court in *Vawter* addressed this same issue where the beneficiary, Chase, conceded
 16 that Chase appointed the successor trustee before Chase was assigned the deed of trust. *Vawter*,
 17 707 F. Supp.2d at 1126-27. The Court entered summary judgment for Chase and MERS as
 18 related to the appointment of the successor trustee, holding that the Plaintiff did not show how
 19 the error caused them prejudice or harm or "how this error would affect any future nonjudicial
 20 foreclosure proceedings." *Id.* at 1127.

21 In *Taylor v. Premier Mortg. Serv. of Washington, Inc.*, 2004 WL 1658626 at * 2-3
 22 (Wash. App. 2004), the Court addressed an issue where "the trustee did not record the notice of
 23 appointment of successor trustee until after service of the notices of default, foreclosure and
 24 sale," such that the trustee was acting without being properly appointed. The Court upheld
 25 judgment against the plaintiff because the trustee remedied the error when it reissued notices for
 26 a rescheduled sale. *Id.*

1 Accordingly, because Plaintiff in the present case, as in *Vawter*, has not pled any harm
 2 arising from the appointment of a successor trustee, and the present holder of the promissory
 3 note has affirmed the appointment of the trustee, even if the original appointment were in error
 4 there is no harm and thus no remedy for Plaintiff. And in accordance with *Taylor*, if the Court
 5 determines that MERS was not authorized to appoint a successor trustee on behalf of the lender,
 6 at the very most the current holder of the promissory note would be required to affirm the
 7 appointment and the trustee would be required to reissue notices for the foreclosure sale.²

8 ***IV. The cases cited by the Court in its Order to Show Cause support a finding that MERS
 9 may act as an agent for the lender/ note holder.***

10 The Court cites to two cases in its Order to show cause in this matter: *In re Jacobson*,
 11 402 B.R. 359 (W.D. Wash. 2009), and *In re Walker*, No. 10-21656, at *2 (E.D. Cal. Bankr. May
 12 20, 2010). *In re Jacobson* addresses whether a servicing agent, UBS AG, provided sufficient
 13 evidence to establish standing to seek relief from a bankruptcy stay. *In re Jacobsen*, 402 B.R. at
 14 359. The servicing agent was not the holder of the note. The Court held that for purposes of
 15 Rule 17, “setting forth that the holder may act through agents. . . is appropriate.” *Id.* at 366. And
 16 the Court held that “[t]o have standing, [a party] must establish its authority to act for the holder
 17 of the Debtor’s note.” *Id.* at 367. But the Court found that “UBS AG has submitted no evidence
 18 that it is authorized to act for whomever holds the note.” *Id.* at 366. The Court only mentions
 19 MERS because, not only did UBS AG present no evidence that it could act on behalf of ACT
 20 Properties LLC, the alleged note holder, but UBS AG presented no evidence that ACT Properties
 21 LLC actually held the note. *Id.* at 367-68. There was only an assignment of the deed of trust

22 ² If this Court were to hold that a portion of the parties’ deed of trust contract is invalid and that MERS cannot be
 23 designated to act on behalf of the lender, this would not otherwise affect the validity of the deed of trust as security
 24 for the promissory note given to Plaintiff, or its priority in the land records. A defect in the security instrument does
 25 not affect the validity of the instrument. § 65.08.030; *see also Smith v Shurtleff*, 968 P.2d 904, 908 (Wash. App.
 26 1998) (“documents which are not properly executed and acknowledged impart the same notice to third persons, from
 the date of recording”); *Anderson Buick Co.*, 110 P.2d at 862 (“the fact that securities were taken by one person in
 the name of another, who had no interest in them, does not invalidate the securities, or prevent the person
 beneficially interested from enforcing payment of them by action.”).

1 from MERS to ACT Properties LLC. *Id.* at 3362. The *Jacobson* Court's analysis demonstrates
 2 that, pursuant to the deed of trust, MERS would be the real party in interest and would have
 3 standing because, unlike UBS AG, the express language in the deed of trust, signed by the debtor
 4 and the lender/note holder, establishes MERS' "authority to act for the holder of the Debtor's
 5 note."

6 *In re Walker* is very similar to *In re Jacobson* because again the claimant did not present
 7 evidence to the Court as to who held the note, or whether any party before the court properly
 8 represented the holder. The Court denied a proof of claim by Citibank because Citibank
 9 presented no proof that it held the note. Bayrock Mortgage held the note, and Citibank was not
 10 purporting to act on behalf of Bayrock. The Court found that MERS' transfer of its legal title to
 11 the deed of trust to Citibank did not give Citibank the necessary interest in the note because
 12 MERS never held the note. The Court does not address whether MERS could have moved on
 13 behalf of Bayrock Mortgage, pursuant to its "authority [in the deed of trust] to act for the
 14 holder," as in *Jacobson*. California courts, however, have consistently held that MERS can
 15 properly be designated as beneficiary on a deed of trust, as nominee for lender. For example,
 16 *Lane v. Vitek Real Estate Indus. Group*, 2010 U.S. Dist. LEXIS 54831 (E.D. Cal. May 11, 2010),
 17 citing numerous cases, holds that MERS can initiate foreclosure and appoint successor trustees.³

18 Based on the analysis in *In re Jacobson* and *In re Walker*, MERS can establish standing
 19 in court to act on behalf of the lender because MERS' authority to act is spelled out in the deed
 20

21 ³ See also *Morgera v. Countrywide Home Loans, Inc.*, 2010 U.S. Dist. LEXIS 2037 (E.D. Cal. Jan. 11, 2010)
 22 ("Courts have consistently found that MERS does in fact have standing to foreclose as the nominee of the lender.
 23 See, e.g., *Trent v. Mortgage Elec. Registration Sys., Inc.*, 288 Fed. Appx. 571 (11th Cir. 2008) (unpublished);
 24 *Mortgage Elec. Registration Sys., Inc. v. Azize*, 965 So. 2d 151 (Fla. App. 2 Dist. 2007); *Mortgage Elec.*
 25 *Registration Sys., Inc. v. Revoredo*, 955 So. 2d 33 (Fla. App. 3 Dist. 2007); *In re Huggins*, 357 B.R. 180 (Bankr. D.
 26 Mass. 2006); *In re Sina*, No. A06-200, 2006 Minn. App. Unpub. LEXIS 1094, 2006 WL 2729544 (Minn. Ct. App.
 Sept. 26, 2006) (unpublished); *Mortgage Elec. Registration Sys., Inc. v. Ventura*, No. CV 054003168S, 2006 Conn.
 Super. LEXIS 1154, 2006 WL 1230265 (Conn. Super. Ct. April 20, 2006) (unpublished); *Mortgage Elec.*
 27 *Registration Sys., Inc. v. Leslie*, No. CV044001051, 2005 Conn. Super. LEXIS 1360, 2005 WL 1433922 (Conn.
 Super. Ct. May 25, 2005) (unpublished.")); *Jackson v. Mortgage Elec. Registration Sys., Inc.*, 770 N.W.2d 487
 (Minn. 2009).

1 of trust signed, which is signed by Plaintiff.⁴ Therefore, under Washington law MERS can also
 2 act on behalf of the lender in a non-judicial setting, pursuant to the agreement between Plaintiff,
 3 lender, and MERS. The authority to act through an agent is expressly contemplated in the Deed
 4 of Trust Act, and is also part of the parties express contract. Plaintiff has shown no reason why
 5 the lender should not be able to act through MERS, and would receiver an unjust windfall if
 6 allowed to avoid foreclosure by the very means that Plaintiff contracted for and where Plaintiff
 7 has failed to make payments on the note.

8 **III. CONCLUSION**

9 MERS may act as a beneficiary and nominee to the lender under a deed of trust in the
 10 state of Washington. MERS properly appointed QUALITY as the successor Trustee under the
 11 instant Deed of Trust and as such the foreclosure of eth Subject Property was initiated and
 12 conducted pursuant to Washington Deeds of Trust Act.

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 15 DATED this 26th day of October, 2010.

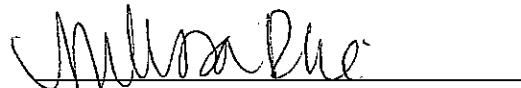
16 **MCARTHY & HOLTHUS, LLP**

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 18 By: /s/ Mary Stearns
 19 Mary Stearns, WSBA #42543
 20 Attorneys for Defendant Quality Loan
 21 Service Corporation of Washington

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 25 ⁴ Indeed, the Bankruptcy Court in Massachusetts holds that MERS has standing to seek relief from the stay and that
 26 "MERS as the mortgagee named in a recorded mortgage (albeit in a nominee capacity) is authorized to conduct a
 27 foreclosure by power of sale." *In re Huggins*, 357 B.R. 180, 183 (Bankr. D. Mass. 2006).

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4 CERTIFICATE OF SERVICE5
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7 I certify that on October 26, 2010, I served a copy of the foregoing document in the
8 manner specified on the following:

9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Richard Llewelyn Jones 2050 112 th Ave NE Bellevue, WA 98004	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Electronic Mail [via efilng] <input type="checkbox"/> Facsimile <input type="checkbox"/> Process Server <input type="checkbox"/> Federal Express
Heidi E. Buck Routh Crabtree & Olsen 13555 SE 36 th Street, Ste 300 Bellevue, WA 98006	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Electronic Mail [via efilng] <input type="checkbox"/> Facsimile <input type="checkbox"/> Process Server <input type="checkbox"/> Federal Express		
Ann T. Marshall Kennard M. Goodman Bishop, White, Marshall & Weibel, PS 720 Olive Way, Ste. 1301 Seattle, WA 98101	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Electronic Mail [via efilng] <input type="checkbox"/> Facsimile <input type="checkbox"/> Process Server <input type="checkbox"/> Federal Express		

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18 I declare under penalty of perjury under the laws of the United States of America and the
19 State of Washington that the foregoing is true and correct and that this Declaration was executed
20 in Poulsbo, Washington.21
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28 Dated: October 26, 2010

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 Melissa Rice, Legal Assistant
 McCarthy & Holthus, LLP